

REMARKS

Claims 15-29 are present in this application. Claims 1-14 were previously cancelled. By this Amendment, the specification is amended. Claims 15 and 29 are the independent claims.

Favorable reconsideration of this application, in light of the following remarks, is respectfully requested.

Rejections under 35 U.S.C. § 103

Claims 15-21 and 23-29 are rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 4,693,867 ("Commarmot") in view of (U.S. Patent Application Publication No. 2002/0101310 ("Jennings")). Applicants respectfully traverse this rejection for the reasons discussed below.

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103(a), all of the claim limitations of the rejected claims must be described or suggested by the cited document(s).¹ Applicants respectfully submit that the cited documents do not meet this criterion, because no combination of the Commarmot and the Jennings references will describe or suggest all of the claim limitations of rejected claims 15-21 and 23-29, and therefore, a *prima facie* case of obviousness has not been established.

For example, claim 15 recites, *inter alia*:

the vessel extending axially through the sleeve, the cap securing the vessel to the sleeve while clamping the diaphragm for sealing the open upper end of the vessel, the open upper end of the vessel being formed with a widening portion, the widening portion being received in a corresponding recess formed in an end plane of the sleeve, and the recess providing a seat for the widening portion in the open upper end of the vessel. (*emphasis added*)

¹ See *In Re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). See also MPEP § 2143.03.

Applicants respectfully submit that the Commarmot reference does not disclose or suggest the above features.

In the outstanding Office Action, the rejection is based on an assertion that “the cover 90 (“cap”) securing the vessel to the sleeve while clamping....”² Applicants respectfully disagree, and direct the Examiner to *col. 8, lines 37-46* of Commarmot, in which it states:

[t]he gripping member 80 is completed by a cover 90 mounted to pivot, in rocking manner, by a horizontal pin 91 on a stirrup 92 rising up from the gripper body 81. The articulated assembly of cover 90 is, for example, ensured by a lever 93 cooperating with at least one contactor 94 assessing either the closed position of the cover 90 in abutment on the upper edge of the ring 88, as illustrated in solid lines in FIG. 14, or the raised position, as shown in broken lines. Contactor 94 is connected to control unit 5

As clear described from this passage, the cover 90 cannot be secured to the vessel to the sleeve while clamping. The cover can be raised (as shown in broken lines in Figure 14) or lowered (as shown in solid lines in Figure 14). In the lower position, the cover is in abutment on the upper edge of ring 88, but it does not secure the vessel to the sleeve while clamping. At most, Commarmot only discloses a reaction vessel in a sleeve. Hence, the Commarmot reference fails to teach or suggest a diaphragm and a cap securing the vessel to the sleeve while clamping the diaphragm for sealing the upper end of the vessel.

In regard to the Jennings reference, it is respectfully submitted that the Jennings reference only teaches a standard prior art reaction vessel with a diaphragm clamped to the upper end by a cap (Figure 14). As such, there is no “cap securing the vessel to the sleeve while clamping the diaphragm for sealing the upper end of the vessel.”

² See Office action mailed April 28, 2009, page 2, lines 15 and 16.

Since the rejection fails to disclose or suggest each and every element of the rejected claims, Applicants respectfully submit that no *prima facie* case of obviousness has been established with respect to claim 1.

Further, in order to establish a *prima facie* case of obviousness, the Examiner must establish that it would have been obvious for one of ordinary skill to have combined the teachings of the cited documents.³ One way to establish this would be to show “some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness” and “identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.”⁴ Furthermore, the Examiner must make “*explicit*” this rationale of “the apparent reason to combine the known elements in the fashion claimed,” including a detailed explanation of “the effects of demands known to the design community or present in the marketplace” and “the background knowledge possessed by a person having ordinary skill in the art.”⁵

It is respectfully submitted that the Examiner has not met these criteria. For example, the Examiner argues that it would have been obvious for a skilled person as motivated by Jennings to combine the septum of Jennings and the device of Commarmot in order “to provide a seal in order to generate a high pressure environment to better favor chemical reactions to proceed.”⁶ However, it is respectfully submitted that the above statement is merely conclusory and do not comprise an “*explicit rationale*” as required by *KSR Int’l*. Therefore, because the Examiner has not

³ See *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. at 398, 82 USPQ2d at 1396 (2007).

⁴ *Id.*

⁵ *Id.*

⁶ See Office Action mailed April 28, 2009, page 3, second paragraph.

provided an explicit analysis as required by *KSR Int'l*, a *prima facie* case of obviousness has not been established.

Moreover, it is respectfully submitted that the Commarmot reference teaches away from the sealing diaphragm of claim 15. More specifically, there cannot be any diaphragm in the apparatus according to Commarmot, because such a diaphragm would keep fumes/vapors locked inside the reaction vessel, and the suction unit would not be able to remove the fumes/vapors through the cover 90 as required.

Furthermore, even if the skilled person would be motivated by Jennings to introduce a septum in the device according to Commarmot, this could be done in a number of ways. The most obvious way is to simply replace the vessel (14) of Commarmot with the vessel (105) of Jennings. However, there is no teaching, suggestion or motivation in either document to use a cap to clamp together the vessel, diaphragm and the sleeve into one single unit. The sleeve of Commarmot is already clamped by jaws (82) and it is not obvious how further clamping means should be introduced.

In view of the above, Applicants respectfully submit that one of ordinary skill in the art would not have combined the teachings of the Commarmot and the Jennings references in the manner used to reject the claims, and that the proposed combination of the Commarmot and the Jennings references fails to teach or suggest all of the elements of claim 15. Thus, no *prima facie* case of obviousness has been established. Accordingly, claim 15 is allowable over the Commarmot and the Jennings references. Dependent claims 16-21 and 23-29 depend from claim 15 and are allowable for at least the reasons that claim 15 is allowable. Therefore, Applicants respectfully request that the rejection of claims 15-21 and 23-29 under 35 U.S.C. § 103(a) be favorable reconsidered and withdrawn.

Claim 22 is rejected under 35 U.S.C. § 103 as being unpatentable over Commarmot in view of Bennett et al. (U.S. Patent 5,520,886). Applicants respectfully traverse this rejection for the reasons discussed below.

As discussed above, Applicants submit that independent claim 15 is patentable over Commarmot. Further, Applicants submit that Bennett does not remedy the deficiencies of Commarmot.

For example, FIG. 1 of Bennett merely discloses a container 13 with a skirt 31 which reduces dangerous explosions by allowing a more gradual failure of the container 13, see, e.g., column 3, lines 43-47 of Bennett.

Thus, Applicants respectfully submit that dependent claim 22 depends from independent claim 15, and is allowable for the reasons stated above with respect to claim 15 as well as for their own merits. Accordingly, Applicants respectfully request that the rejection be reconsidered and withdrawn.

CONCLUSION

Accordingly, in view of the above amendments and remarks, an early indication of the allowability of each of claims 15-29 in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact John A. Castellano at the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By

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